

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TERRANCE D. MORTON, SR.,

Plaintiff(s),

vs.

CVS CORPORATION,

Defendant(s).

Case No. 2:16-cv-02307-RFB-NJK

ORDER

On October 4, 2016, the Court screened Plaintiff's complaint as required by 28 U.S.C. § 1915. Docket No. 5. The Court found that Plaintiff failed to establish subject matter jurisdiction. *Id.* at 3-4. In particular, the Court found that Plaintiff failed to allege that the Court has federal question jurisdiction, and also failed to allege a sufficient amount in controversy such that diversity jurisdiction exists. *Id.* at 4. The Court ordered that, to the extent Plaintiff believed he could cure that defect, he must file an amended complaint by November 1, 2016. *Id.* The Court further warned Plaintiff that dismissal of this case could result from failing to file an amended complaint. *Id.* at 5.

Plaintiff did not file an amended complaint as ordered. Instead, he filed a motion to serve Defendant. Docket No. 7. The Court denied that motion as premature, however, "as the Court will not order service through the United States Marshal Service unless and until Plaintiff has properly pled that this Court has subject matter jurisdiction." Docket No. 8.

In light of Plaintiff's status as a *pro se* litigant, the Court then made clear that "this case cannot proceed unless Plaintiff files an amended complaint that resolves the defects identified in the

order at Docket No. 5.” *Id.* The Court provided Plaintiff a further opportunity to amend his complaint, extending the deadline to file an amended complaint to November 22, 2016. *Id.*

Once again, Plaintiff has not filed an amended complaint. Instead, he has filed a motion to amend seeking an order effectuating service. Docket No. 9. The Court has already ordered that Plaintiff may amend his complaint, as explained above. Moreover, the Court has already ruled that service is premature until an amended complaint is filed curing the jurisdictional defect identified.

It is clear that Plaintiff is not understanding what is required here, so the Court is going to explain it one final time in an attempt to enable him to try to proceed with this case. The Court previously determined that Plaintiff did not provide sufficient facts to support his allegation that the amount in controversy in this case exceeds \$75,000. Docket No. 5 at 3-4. In particular, while Plaintiff is demanding \$500,000,000 in damages, the complaint lacks sufficient facts showing that Plaintiff’s alleged physical removal from a CVS store lends itself to a finding that at least \$75,000 in damages is in controversy here. *Id.* Without a sufficient showing on this end, the Court lacks jurisdiction over this case and it cannot proceed. As such, if Plaintiff wishes to continue to pursue this case, he must file an amended complaint providing a factual basis showing that there is at least \$75,000 in controversy in this case. Pursuant to its obligations under 28 U.S.C. § 1915(e), the Court will not order that service be effectuated unless and until Plaintiff has sufficiently pled that the Court has subject matter jurisdiction over this case. The Court will afford Plaintiff **one final opportunity to file an amended complaint.**

For the above reasons, the Court hereby **ORDERS** that:

1. The motion at Docket No. 9 is **DENIED** as moot and premature.
2. Plaintiff will have until **December 23, 2016**, to file an Amended Complaint, if he believes he can correct the noted deficiencies in Docket No. 5. If Plaintiff chooses to amend the complaint, Plaintiff is informed that the Court cannot refer to a prior pleading (i.e., his original Complaint) in order to make the Amended Complaint complete. This is because, as a general rule, an Amended Complaint supersedes the original Complaint. Local Rule 15-1(a) requires that an Amended Complaint be complete in itself without reference to any prior pleading. Once a plaintiff files an

1 Amended Complaint, the original Complaint no longer serves any function in the
2 case. Therefore, in an Amended Complaint, as in an original Complaint, each claim
3 and the involvement of each Defendant must be sufficiently alleged. **Failure to**
4 **comply with this order will result in the recommended dismissal of this case.**

5 IT IS SO ORDERED.

6 Dated: December 2, 2016

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NANCY J. KOPPE
United States Magistrate Judge